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In the Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-227

JOSEPH WALLER, JR.,
Petitioner,

vs.

CITY OF ST. PETERSBURG, FLORIDA,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF FLORIDA

RESPONDENT'S BRIEF

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QUESTIONS PRESENTED

1) WHETHER OR NOT THE ST. PETERSBURG MUNICIPAL ORDINANCE MAKING IT A CRIME "TO . . . VERBALLY ABUSE OR MAKE DEROGATORY REMARKS TO A POLICEMAN IN THE PERFORMANCE OF HIS DUTIES", IS, INSOFAR AS IT PROHIBITS

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2) WHETHER OR NOT PETITIONER'S CONVICTION AND JAIL SENTENCE WHICH WAS OBTAINED IN THE MUNICIPAL COURT OF ST. PETERSBURG, FLORIDA, UNDER A BROAD CONSTRUCTION OF AN UNCONSTITUTIONALLY OVERBROAD MUNICIPAL ORDINANCE MAKING IT A CRIME "TO . . . VERBALLY ABUSE OR MAKE DEROGATORY REMARKS TO A POLICE OFFICER IN THE PERFORMANCE OF HIS DUTIES", MAY BE UPHELD BY THE FLORIDA SUPREME COURT BY GIVING THE CHALLENGED ORDINANCE A NARROW, CONSTITUTIONALLY ACCEPTABLE CONSTRUCTION FOUR YEARS AFTER THE CONVICTION HAS BEEN OBTAINED.

(As restated to avoid begging facts)

IS THE FEDERAL COURT BOUND BY AN ACCEPTABLE, LIMITING CONSTRUCTION OF A STATE'S HIGHEST COURT IF SUCH CONSTRUCTION IS APPLIED TO A STATUTE GOVERNING CONDUCT OCCURRING PRIOR TO THE CONSTRUCTION?

3) WHETHER OR NOT AFFIRMANCE OF PETITIONER'S MUNICIPAL COURT CONVICTION BY THE SUPREME COURT OF FLORIDA UNDER ITS CONSTRUCTION OF THE ORDINANCE IN QUESTION, CONSTITUTES A DENIAL OF DUE PROCESS UNDER THE FOURTEENTH AMENDMENT BY REASON OF THE FACT THAT THERE IS NO EVIDENCE IN THE RECORD TO SUPPORT A CONVICTION UNDER SUCH CONSTRUCTION. (deletions to avoid begging incorrect facts)

4) WHETHER OR NOT THE IMPOSITION UPON PETITIONER OF THE "MAXIMUM SENTENCE" OF

NINETY DAYS IN JAIL ON EACH OF HIS THREE CONVICTIONS FOR "VERBAL ABUSE", "OBSCENITY" AND "SIMPLE ASSAULT", FOR THE EXPRESS PURPOSE OF PUNISHING PETITIONER FOR HIS PRIOR "MILITANT" PUBLICATIONS AND ACTIVITIES AND TO "DO SOMETHING TO STOP IT IN THE FUTURE", IS AN UNCONSTITUTIONAL USE OF THE SENTENCING POWER OF THE MUNICIPAL COURT TO PENALIZE PETITIONER FOR THE EXERCISE OF HIS FIRST AMENDMENT FREEDOMS AND TO INTIMIDATE HIM AND OTHERS FROM THE FUTURE EXERCISE OF SUCH FREEDOMS.

JURISDICTION

Since Petitioner had a sure remedy (28 USC Sec. 1257 (2)) by appeal, but chose discretionary statutory certiorari instead, it is obvious he had a purpose.

In certiorari he would normally have a skimpier record and perhaps could avoid the full impact of "hard-core" facts. This advantage to the petitioner of certiorari over appeal can be easily avoided by the respondent ordering up the transcript and by some member of the Supreme Court's staff reading such transcript.

There is another advantage to the petitioner. If this Court declines jurisdiction, this act of declining does not finally dispose of this case. Petitioner can then run the hierarchy of the Federal Courts in Habeas Corpus. It is for this reason that respondent urges this Court to take jurisdiction in order to conclude this case once and for all and at the same time by ruling for the City, breathe new life into Chaplinsky which is good law and needs to be ratified and distinguished after its assault by Gooding.

STATEMENT OF THE CASE

Petitioner, defendant below, is the leader of a militant organization called JOMO, for Junta of Military Organization. On the night of August 14, 1968, defendant and a group of JOMO members left their headquarters on Harrington Avenue South in the City of St. Petersburg and went looking for the police following a report that a person named Loretta Munderlyn had been arrested on 22nd Street and 7th Avenue. Defendant had with him an amplified megaphone and his followers wore the distinctive dress or uniform of their organization. A police cruiser on routine patrol first spotted the group gathered at the corner of 22nd Street and 9th Avenue. As the police car approached, people in the group yelled, "Here come the pigs. Here they come. Look at the pigs." As the car came closer the crowd began to chant, "Pig, pig." On reaching the corner of 22nd Street and 9th Avenue, abreast of the group, the cruiser slowed to a stop for a red light. At this point, defendant Waller stepped into the street, thrust his megaphone close to the front right-hand window of the police car and yelled, "Pig. White pig. Sooey, sooey." The megaphone was described as "very loud" and sufficient to be heard for blocks away. Other members of the group behind the defendant yelled, "Pig" and various obscenities at the officers in the car.

The officers radioed for a conference with the shift lieutenant, Lieutenant Colman, who met them at a corner six blocks away. Lieutenant Colman, in a patrol car with one other officer, then proceeded to the scene followed by the car that had first encountered the group. A third police car subsequently arrived so that there were a total of nine officers at the scene.

As Lieutenant Colman's car approached the group on the corner of 22nd Street, they could hear from half a block away the words, "Pig, white pig, hey, there's the pigs," shouted in their direction through a sound-powered megaphone. Defendant was using the megaphone and was the most vocal and noticeable member of the group. As the Colman car approached, the group moved down from the curb and into the street. Defendant again directed the megaphone very close to the cruiser and yelled through it at the officers inside. Some of the individuals in the group started around to the front of the car and others, including the defendant, went to the rear of the car. Lieutenant Colman met the defendant at the rear of the car and arrested him, holding him with a nightstick placed across his body and grasped at either end. Thus restrained, the defendant offered no immediate resistance. By this time, the second carload of officers had arrived at the scene. Lieutenant Colman started walking back to the car and sought to turn him over to Sergeant Mein so that he, Colman, could turn his attention to other individuals of the group. As soon as Lieutenant Colman released defendant, a scuffle broke out and the defendant became very vocal again, shouting obscenities in a loud voice and attracting other onlookers to the area. Officer Hanson assisted Sergeant Mein who was struggling with the defendant. The defendant continued cursing, yelling, spitting on the officers and yelling "White M .....-F ....." and similar obscenities. At this point, the defendant's sister broke from the crowd and grabbed one of the officers from behind. She was yelling various obscenities at the officers and was subsequently arrested. While she was struggling with the officers who were arresting the defendant, another member of defendant's group, one Fred Hamilton, broke from the crowd and grabbed Officer Hanson. During the struggle

Officer Hanson's gun was unstrapped and pulled half-way from the holster before Officer Trappman came to his assistance and arrested Hamilton.

By this time quite a crowd had collected and, as the officers left the scene with their prisoners, rocks and bottles were thrown by the crowd that had gathered. During the ride back to the police station, defendant became violent and kicked Officer Murphy, spit in his face and cursed him with various obscenities.

Defendant was charged with (1) simple assault in violation of City Ordinance 25.4; (2) obscene language in violation of City Ordinance 25.42; and (3) verbal abuse of a police officer in violation of City Ordinance 25.43.1. At the trial, defendant admitted yelling "Pig" at the police officers through the megaphone, but only after he was arrested. He denied resisting arrest, claimed he was subjected to police brutality and contended that the arrest was illegal because at the time of the arrest he was not informed of the offense against him. His counsel contended at the trial that because of defendant's reputation as a known trouble-maker, the police were out to get him and that the increased police activity in the area, including surveillance of the JOMO headquarters, constituted "provocation" for the incident. It was argued that the return of the police officers to the scene where the group was yelling "Pig" constituted entrapment, since the police thereby brought themselves "into the ambit of those words." Defendant also contended that the Ordinance proscribing verbal abuse of a police officer was unconstitutionally vague.

Defendant was tried in the Municipal Court before the Honorable Henry Esteva and found guilty on all three charges. He was sentenced to ninety (90) days imprisonment on each of the three charges. On appeal, the Circuit Court affirmed the conviction.

Defendant sought certiorari in the District Court and was successful in having Ordinance Section 25.43.1 declared unconstitutionally overbroad and specifically the language "verbal abuse" void. The District Court directed discharge of the defendant on the charge of verbal abuse and ordered a new trial on the other two convictions.

The City then processed conflict certiorari to the Supreme Court of Florida. Jurisdiction was first granted under a two-part procedure. After briefs and arguments were later heard on the merits, the Supreme Court of Florida issued its Opinion and Order quashing the writ of the District Court and remanding the cause with directions to reinstate the trial court's judgment. The Petitioner now seeks statutory certiorari under 28 USC Sec. 1257 (3).

ARGUMENT

1) Whether or Not the St. Petersburg Municipal Ordinance Making It a Crime "to . . . Verbally Abuse or Make Derogatory Remarks to a Policeman in the Performance of His Duties," Is, Insofar As It Prohibits Speech, Unconstitutionally Overbroad on Its Face under the Prior Decisions of This Court Applying the First Amendment.

The bare bones of Chaplinsky still exist to show that it was here. It was good law, allow its vestiges to remain. To reverse the highest Florida court in this a classic case for its application would result in its permanent extinction, a smoothing of the desert sands. This should not occur.

On the proper found facts, this case is a perfect example of a fitting application of Chaplinsky's fighting words exception to first amendment privileges.

It is axiomatic and hornbook law that the facts of a case cannot be retried on appeal. It is also axiomatic that the findings of the trial court, sitting as a trier of facts, is entitled to the same presumption of correctness as that of a jury. It is only when there is no competent, substantial evidence in the record to support a verdict that it can be overthrown by an Appellate Court. Since the prosecution won in the trial court with overwhelming proof, it is the prosecution's facts that are the facts of this case.

It, therefore, can and should be accepted that the defendant, surrounded by an unruly and surly group, stepped into the street, projected a powerful voice amplifier almost into the open window of a police cruiser and shouted at the occupants therein "Pigs, pigs, sooey, sooey, white pigs" loud enough to be heard several blocks away, and that this act of the defendant culminated a series of similar acts that were inflaming the crowd. These are the established facts of the case (AP1-4). The supposed facts taken completely from context on page 11 of petitioner's brief have no proper place as essential facts.

If any doubt has been raised by the constant editoralizing of the facts by the petitioner in his brief that this case does not have as essential facts the strongest possible "hard-core" verbal abuse, then the Court should have some member of its staff read the trial testimony in its entirety. For this purpose, a request is being made that the record, in its entirety, be transmitted to this high court.

With the above "hard-core" facts in mind, should a reasonable man know that the above conduct was proscribed by the following ordinance:

> "It shall be unlawful for any person to challenge to fight, assault, strike, *verbally abuse* or make derogatory remarks to a police officer in the performance of his duties."

See *U. S.* v. *National Dairy Products*, 372 U.S. 29, 32 (1963) for reasonable man rule.

All are presumed to know the law. Could defendant Waller, with full knowledge of this ordinance, have been misled into believing that his insults were legal? This answer is obvious. This was not a chance remark in an otherwise lawful conversation. This was not the communication of any idea, except hate and derision, as stated in *Cantwell* v. *Connecticut*, 310 U.S. 296, 309, 84 L.Ed. 1213, 1221, 60 S.Ct. 900:

> "... personal abuse is not in any proper sense communication of information or opinion safeguarded by the constitution and its punishment as a criminal act would raise no question under that instrument."

Defendant Waller could have no motive for his acts other than to berate and abuse the police and inspire hate and anger in those who watched. These same acts could, under the test of Chaplinsky, have legally constituted disorderly conduct; they were fighting words, a verbal slap in the face. This is "hard-core" conduct obviously prohibited under any construction of the ordinance.

The petitioner attempts to distinguish the instant facts from Chaplinsky's but fails to mention that Chaplinsky's facts involved a public officer, a marshal, receiving verbal abuse *in the performance of his duties* under circumstances so similar to Waller as to disallow any meaningful difference.

The Supreme Court of Florida in its well written fifteen page opinion has briefed this point so well that additional arguments and citations are unnecessary and redundant. It is set out in its entirety in petitioner's Appendix (A1) and contains citations of every Federal case pertinent to the argument.

It is submitted in closing this point that Florida's highest Court has obviously narrowed St. Petersburg's ordinance even further than the New Hampshire courts did to their statute in *Chaplinsky*.

To properly obtain a conviction under St. Petersburg's ordinance, the prosecution must prove: fighting words, fighting words hurled at a particular individual or group and tendency to inflame recipient and others to an immediate present danger of breaching the peace. All are found in the record.

2) **Whether or Not Petitioner's Municipal Conviction and Jail Sentence Which Was Obtained in the Municipal Court of St. Petersburg, Florida, under a Broad Construction of an Unconstitutionally Overbroad Municipal Ordinance Making It a Crime "To . . . Verbally Abuse or Make Derogatory Remarks to a Police Officer in the Performance of His Duties," May Be Upheld by the Florida Supreme Court by Giving the Challenged Ordinance a Narrow, Constitutionally Acceptable Construction Four Years After the Conviction Has Been Obtained.**

(As restated to avoid begging facts)

Is the Federal Court Bound by an Acceptable, Limiting Construction of a State's Highest Court If Such Construction Is Applied to a Statute Governing Conduct Occurring Prior to the Construction?

Question 2 is the only part of petitioner's brief really meriting serious discussion. On the surface it appears to have some merit; on deep examination the merit dissolves.

Petitioner cites for his only authority the two *Shuttlesworth* decisions, *Shuttlesworth* v. *City of Birmingham* (1968), 394 U.S. 147, 22 L.Ed.2d 162, 89 S.Ct. 935; *Shuttlesworth* v. *Birmingham* (1965), 382 U.S. 87, 15 L.Ed.2d 176, 86 S.Ct. 211 and *Bouie* v. *Columbia* (1964), 378 U.S. 347, 12 L.Ed.2d 894, 84 S.Ct. 1697.

Only one of the two *Shuttlesworth* decisions (*Shuttlesworth* v. *City of Birmingham*, 382 U.S. 87) hints at supporting petitioner's position. This case cites *Bouie* as its sole authority; the *Bouie* decision obviously holds the key to this important point.

The essence of *Bouie* is that if the highest Appellate Court of the State, in construing a criminal statute, upsets its previously established precedent construing a particular statute and so strains the meaning of the statute by a new and different construction as to carry it beyond common understanding, then this new act of construction is equivalent to new legislation. It is, therefore, reasoned that since new legislation cannot "ex post facto" make a previous act a crime, then it follows that its equivalent in judicial interpretation cannot do so. *Bouie*, as it stands, is obviously good law and sound reasoning. It is not, however, authority for petitioner's Point 2.

Can petitioner then find solace in *Shuttlesworth* (382 U.S. 87) as perhaps having broadened the rule of *Bouie*? The answer is no. This case carries little beyond *Bouie* as its facts and a concurring opinion in this very case states succinctly the basic law that concludes this point. This clearly shows the ruling of the case has not changed the basic law but can be distinguished from it. In his concurring opinion, Justice Brennan quotes the following; it obviously controls and settles this point:

"Moreover, because this construction delimits the statute to 'the sort of hard-core conduct' that would obviously be prohibited under any construction . . . it may be legitimately applied to such conduct occurring before that construction."

This statement carries as a citation for this statement and properly so *Dombrowski* v. *Pfister*, 380 U.S. 479, 14 L.Ed. 22. Other cases indicating that once an acceptable, limiting construction is placed on a statute, it can be applied to prior conduct are:

Poulos v. *New Hampshire*, 345 U.S. 395, 97 L.Ed. 1105, 73 S.Ct. 760, 30 ALR 2d 987;

Cox v. *New Hampshire*, 312 U.S. 569, 85 L.Ed. 1049, 61 S.Ct. 762, 133 ALR 1396;

Winters v. *New York*, 335 U.S. 507, 92 L.Ed. 840, 68 S.Ct. 665;

Lanzetta v. *New Jersey*, 306 U.S. 451, 83 L.Ed. 888, 59 S.Ct. 618;

C. F. Harrison v. *NAACP*, 360 U.S. 167, 179, 3 L.Ed.2d 1152, 1159, 79 S.Ct. 1025;

Groppi v. *Wisconsin*, 400 U.S. 505, 27 L.Ed.2d 571, 91 S.Ct. 490.

3) **Whether or Not Affirmance of Petitioner's Municipal Court Conviction by the Supreme Court of Florida under Its Construction of the Ordinance in Question, Constitutes a Denial of Due Process under the Fourteenth Amendment by Reason of the Fact That There Is No Evidence in the Record to Support a Conviction under Such Construction.** (deletions to avoid begging incorrect facts).

There is considerable doubt to the respondent that this point has been preserved for review. It was before

the Florida Supreme Court only by the rehearing motion.

Point 3 can best be answered by referring to the facts of this case, pointing out that not only was the large group with Waller incited into violence (AP1-4), but since the revolver of one police officer was partially removed from its holster by an inflamed by-stander, it can be correctly stated that they were incited to near homicide. If it had not been for the quick action of Officer Trappman in this case, a shoot-out could easily have occurred. There is ample evidence of both interference with a police officer in his duties and present danger incitement to breach of peace not only of the police officers insulted, but many others as well as the police. Many were triggered and inflamed by the fighting words used by defendant Waller not only once, but many times in order to fan the flames of hatred and incite to violence.

4) **Whether or Not the Imposition upon Petitioner of the "Maximum Sentence" of Ninety Days in Jail on Each of His Three Convictions for "Verbal Abuse", "Obscenity" and "Simple Assault", for the Express Purpose of Punishing Petitioner for His Prior "Militant" Publications and Activities and to "Do Something to Stop It in the Future", Is an Unconstitutional Use of the Sentencing Power of the Municipal Court to Penalize Petitioner for the Exercise of His First Amendment Freedoms and to Intimidate Him and Others from the Future Exercise of Such Freedoms.**

This point was not "preserved and presented for review in every Florida Court which considered the case", as stated by the petitioner. This point has never been

raised in its present form in any court which has heard this case. An attack on the severity of the sentence was made in the Circuit Court appeal under a *unique statutory proceeding* which gives that court plenary powers over sentences ordinarily not given or exercised by Appellate Courts. F.S.A. 924.41 (3) states:

> "The circuit court shall examine the record and reverse, affirm, or modify the judgment. *The circuit court may lower the sentence* imposed by the municipal court." (Emphasis supplied)

A somewhat similar point was made in the District Court. The Supreme Court of Florida heard one point and one point alone. See respondent's Appendix (AP18-23) for entire Petition for Certiorari. Even when some new issues were interjected in the Petition for Rehearing, this point was not raised by petitioner (Pet. AP16).

This case has a petitioner who is a "super-phoenix". Every time one point is put down, four more arise from the ashes. The appellate process should constantly narrow issues, not broaden them.

The Supreme Court Rules governing certiorari apparently do not provide for a Motion to Strike so the question must be answered; the answer will be short.

That the trial judge may have done some of his thinking out loud does not prove he did all of it. The few statements quoted do not in any way detract from a proper judgment in this case. "The Supreme Court reviews judgments, not opinions", *Black* v. *Cutter Lab.* (Calif. 1956), 76 S.Ct. 824, 324 U.S. 292, 100 L.Ed. 1188.

CONCLUSION

That this Court's discretionary power to hear statutory certiorari be invoked to hear the case on its merits. That questions one and two be ruled on in favor of the City of St. Petersburg on the basis that Chaplinsky is still alive, and that the Florida Supreme Court has, by an acceptable and logical interpretation, preserved the ordinance under the rule of that case. That questions three and four be concluded by ruling that they have not been properly preserved in the record.

The further ruling that a "verbal brickbat" of insulting words through a voice amplifier only a few feet away from the head of a victim is "hard-core" abuse would dispose of this case finally and conclusively on its merits.

CARL R. LINN

Attorney for Respondent City of St. Petersburg

EXTRACTS FROM TRIAL TESTIMONY, CHARGES

A. When we came abreast of them, the defendant Joseph Waller directed his voice through a megaphone directly into the right front window and stated, "Pigs, pigs, you pigs," and a few "sooeys," and a few more "pigs." He was backed up by other shouts of "Pigs" and "sooey" from the remainder of the crowd he was accompanied by. (TR-26) • • •

A. and we followed in our cruiser. It was a station wagon. We followed about a half a block behind him. As we approached Ninth Avenue again, we could see the Lieutenant's car at Harrington Avenue stopped, and again we heard through the megaphone "Pig, you pig, sooey, pig, pig." (TR-27) • • •

A. I was in a position in front of Waller. He was continuing cursing, yelling "Pig," and spitting upon me. (TR-28) • • •

Q. Would you tell us what type of obscenities he used?

A. Obscenities?

Q. Yes.

A. As Waller was struggling with Sgt. Mein and Officer Morris, he was spitting upon me and uttering, "Pig, pig, white mother-fucking pigs," all at the same time he was spitting upon me. At that time I grabbed him by the throat to shut off his wind so he couldn't spit upon me any more." (TR-29) • • •

A. As we approached Harrington, there were a group of people walking south on the west side of 22nd Street, and I could hear the words, "Pig, pig, you pig, you

pig." My attention focused on Joe Waller, who had this microphone in his hand, saying, "Pig, pig, pig" through the microphone. Lt. Colman turned left up Harrington just off 22nd, stopped the car in front of the sidewalk. Joe Waller then came up to the window of my car with the microphone and started, "You pig, you pig, you pig," right in the car.

Q. How far from your car was the mouth of this amplifying device?

A. It was outside the window. (TR-50) * * *

A. Because the only time "Pig" was yelled out there is when the Police Officers went by, and he came right up to the car with the microphone and said, "You pig, you pig," right to me and Lt.—(TR-56) * * *

A. This is the only words that I heard. At that time I grabbed him and pulled him back into the cruiser, at which time he became violent, started resisting and kicking, shouting words of obscenity at me, and spit in my face. (TR-61) * * *

Q. All right now, when you described his kicking, Officer, just—was it one leg, two legs, or describe exactly where he kicked and—

A. With both legs. As I pulled him back in the cruiser, he turned and aimed both legs at me, kicking me about the legs and waist.

Q. Did he actually make contact with you several times with his feet?

A. Yes, sir, he did.

Q. And would you step down to the—or up to the bench here, and in a low voice describe just what invectives were directed to you?

(The following proceedings were had at the bench)

A. Well, at the time that I pulled him back into the car, he says, "You mother-fucker, get your white hands off of me." Then the struggle and kicking and spitting in my face occurred. Before the spitting in the face, he made reference to my mother was a white string-haired whore. At the same time he spit in my face. That's when I struck him in the mouth with a stick to secure him.

Q. Did you actually receive spittle in your face when he spat?

A. Yes, sir, I did.

Q. You may retake the stand, please. (TR-62) * * *
(The following proceedings were had at the bench.)

A. He called Murphy's mother a "white skinny whore" and called us "white mother-fuckers."

Q. Did you—the noise of his scuffling—you were driving the vehicle, is that correct?

A. Right.

Q. You were facing forward?

A. Right. (TR-65) * * *

A. He offered no immediate resistance. I took—I had a night stick with me. I took the night stick and placed it around his body and grasped the other end, thus holding him between me and the night stick. Here, too, he offered me no immediate resistance. I then walked back toward the car, and during this period of time another carload of officers arrived at the scene, Officer Trappman and several officers that were working with him. Some of the individuals began to run

from the area; some of them did not. I got Waller back to the car, and still he was not offering any resistance toward my arrest at the time. * * * There was a scuffle which broke out at this time. The defendant Waller became very vocal, used some obscenities in a loud voice, and by this time the incident was attracting other onlookers to the area. (TR-70) * * *

A. As we stopped in the street, we were the only white people that I saw around. We were the only whites that I know of that were there at that particular time. We have been called "Pig" before by some of his followers. In this particular instance there was no doubt in my mind who this was directed at, and I was further convinced when Mr. Waller and his followers stepped from the curb toward the cruiser and leaned over and all hollered this in a loud voice on a sound-powered megaphone. I felt there was grounds and basis for the charge, and therefore an arrest was made. (TR-75) * * *

A. We followed the Lieutenant down 22nd, and we ran right into the thick of it. They started all over again, "Pig, pig, white pig," and Lt. Colman arrested the subject Waller. (TR-37) * * *

AP5

PETERSBURG
COUNTY, FLORIDA
TION / COMPLAINT

No. B 71821

CKET NO. 123515 PROPERTY NO. 163986 OFFENSE NO. 42135
IN THE MUNICIPAL COURT OF THE CITY OF ST. PETERSBURG, FLORIDA:
THE UNDERSIGNED BEING DULY SWORN UPON HIS OATH DEPOSES AND SAYS:

DATE OF CITATION: 4/21/66 TIME OF CITATION: 2145
DATE OF VIOLATION: 4/21/66 TIME OF VIOLATION: 2120
NAME: JOSEPH GL WALLER
RESIDENCE: 2450 - HARRINGTON A/S.
PLACE EMPLOYED: NOT
OCCUPATION: NONE D.O.B. 10-7-41 RACE W SEX M
CH/OP NO. — STATE — YEAR —
VEH. LIC. NO. — STATE — YEAR —
MAKE — BODY TYPE — YEAR — COLOR —
DID UNLAWFULLY COMMIT THE FOLLOWING OFFENSE WITHIN THIS MUNICIPALITY,
NAMELY AT: HARRINGTON A/S - 22 S/S.

NAME: Joseph Waller

B 71821

SPEEDING ___ M.P.H. IN ___ M.P.H. ZONE ☐ FROM WRONG LANE
IMPROPER LEFT TURN ☐ NO SIGNAL ☐ CUT CORNER ☐ PROHIBITED
IMPROPER RIGHT TURN ☐ NO SIGNAL ☐ INTO WRONG LANE ☐ PROHIBITED ☐ FROM WRONG LANE
TRAFFIC SIGNAL VIOLATION (WHEN LIGHT TURNED RED) ☐ PASSED MIDDLE INTERSECTION ☐ MIDDLE OF INTERSECTION ☐ NOT REACHED INTERSECTION
STOP SIGN VIOLATION ☐ WRONG PLACE ☐ FAILS SPEED ☐ FASTER
IMPROPER PASSING AND LANE USAGE ☐ AT INTERSECTION ☐ CUT IN ☐ WRONG SIDE OF PAVEMENT ☐ BETWEEN TRAFFIC ☐ ON RIGHT ☐ ON GRADE ☐ LANE STRADDLING ☐ WRONG LANE ☐ ON CURVE
FAILURE TO YIELD RIGHT OF WAY ☐ FROM PRIVATE DRIVE ☐ FROM STOP/YIELD SIGN ☐ WHEN TURNING LEFT
OTHER OBSCENE LANGUAGE
IN VIOLATION OF 26.42 ☒ CITY ORD. ☐ STATE STAT.

SLIPPERY PAVEMENT ☐ WET ☐ RAIN ☐ NIGHT
DARKNESS ☐ FOG ☐ RAIN ☐ UNLIGHTED ☐ CROSS ☐ ONCOMING
OTHER TRAFFIC PRESENT ☐ PEDESTRIAN ☐ SAME DIRECTION
CAUSED PERSON TO DODGE ☐ DRIVER ☐ PEDESTRIAN
JUST MISSED ACCIDENT BY APPROX. ___ FT.
PD ☐ PI ☐ FATAL ☐
☐ PED ☐ VEHICLE ☐ HIT FIXED OBJECT ☐ RIGHT ANGLE ☐ HEAD ON ☐ SIDE SWIPE ☐ REAR END ☐ RAN OFF ROADWAY ☐ INTERSECTION

HIGHWAY TYPE: ☐ 2 LANE ☐ 3 LANE ☐ 4 LANE ☐ 4 LANE DIVIDED
AREA: ☐ RURAL ☐ RESIDENTIAL ☐ SCHOOL ☐ INDUSTRIAL ☐ BUSINESS

THE UNDERSIGNED FURTHER STATES THAT HE HAS JUST AND REASONABLE GROUNDS TO BELIEVE, AND DOES BELIEVE, THAT THE PERSON NAMED ABOVE COMMITTED THE OFFENSE HEREIN SET FORTH, CONTRARY TO LAW. SWORN TO AND SUBSCRIBED BEFORE ME

PR NO. 1197-R-55

THIS 21 DAY OF April 19 66 [signature]
(SIGNATURE OF OFFICER OR COMPLAINANT)
[signature]
(NOTARY PUBLIC) (ADDRESS OF COMPLAINANT)

COURT APPEARANCE 26 DAY OF June 19 66 AT 1 P M.
I HEREBY AFFIX MY SIGNATURE WITH THE UNDERSTANDING THAT SUCH IS NOT A PLEA OF GUILTY, BUT TO CERTIFY THAT I HAVE RECEIVED A SUMMONS COPY OF THIS CITATION AND AGREE TO APPEAR AT THE TIME AND PLACE INDICATED.

SIGNATURE: ___

AP6

IN THE MUNICIPAL COURT OF THE CITY OF ST. PETERSBURG, FLORIDA

CITATION COMPLAINT No. B-71821

CITY OF ST. PETERSBURG,

vs.

JOSEPH WALLER, JR.

Bill of Particulars

Comes now the plaintiff, City of St. Petersburg, by and through its undersigned Attorney, and brings this its Bill of Particulars in response to defendant's motion heretofore filed:

1. Any or all of the following:

(a) Any or all of the following language was used by the defendant, Joseph Waller, at or near the intersection of Harrington Avenue and 22nd Street South, St. Petersburg, Florida: "Mother Fucker", "Mother Fuckers", "White Bastards".

(b) The following language was used by the defendant, Joseph Waller, Jr., while in a motor vehicle enroute to the St. Petersburg Police Station, 1300 First Avenue North, St. Petersburg, Florida, from Harrington Avenue and 22nd Street South: "Your mother is a stringy haired white whore."

2. (a) The following persons known to the City were witnesses to the use of the language described in 1 (a) above, by the defendant, Joseph Waller, Jr.:

Lt. Mel Coleman, Sgt. Mein, Officer Hanson and Officer Morris, all of the St. Petersburg Police Dept.

The following persons may be witnesses to part or all of the language described in 1 (a) of this Bill of Particulars and to its use by the defendant, Joseph Waller, Jr., at or near the intersection of Harrington Avenue and 22nd Street South, St. Petersburg, Florida:

Officer Hurley and Officer Trappman
St. Petersburg Police Department

Fred Lewis Hamilton—2450 Harrington Avenue South

Joyce Waller Walker—2450 Harrington Avenue South

Fred Lewis Hamilton—2450 Harrington Avenue South

James Gilley—805 Private Court South

Steven C. Heatley—263 Jordan Park

Other persons whose identity is unknown to the City.

(b) The following persons, known to the City, were witnesses to the use of the language described in Paragraph 1 (b) of this Bill of Particulars by the defendant, Joseph Waller:

Officers O. Murphy and Leake, St. Petersburg Police Dept.

Joseph Waller, Jr.—2450 Harrington Avenue South

3. None.

4. Any or all of the following locations:

(a) The conduct described in Paragraph 1 (a) of this Bill of Particulars occurred on Harrington Avenue South, St. Petersburg, Florida, approximately at the intersection of Harrington Avenue South and 22nd Street South.

(b) The conduct described in Paragraph 1 (b) of this Bill of Particulars occurred while the defendant, Joseph Waller, Jr. was in a moving motor vehicle enroute to the St. Petersburg Police Station, 1300 First Avenue North, St. Petersburg, Florida, from Harrington Avenue and 22nd Street South, St. Petersburg, Florida.

.....

Michael S. Davis
Assistant City Attorney
Municipal Building
St. Petersburg, Florida

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the above Bill of Particulars has been furnished to Garner W. Beckett, Jr., Esq., Attorney for Defendant, 52 - Sixth Street South, St. Petersburg, Florida, by Mail, this ..... day of August, 1968.

.....

Attorney

AP9

CITY OF ST. PETERSBURG
PINELLAS COUNTY, FLORIDA
CITATION / COMPLAINT

No. B 71742

DOCKET NO. 4M3376 PROPERTY NO. K5497 OFFENSE NO. 44935
IN THE MUNICIPAL COURT OF THE CITY OF ST. PETERSBURG, FLORIDA:
THE UNDERSIGNED BEING DULY SWORN, UPON HIS OATH DEPOSES AND SAYS:

DATE OF CITATION: 11 April TIME OF CITATION: 2150
DATE OF VIOLATION: 11 April TIME OF VIOLATION: 2120
NAME: Joseph (W) Walker
RESIDENCE: 2450 Harrington Ave. So.
PLACE EMPLOYED: NOT
OCCUPATION: none D.O.B. 10-9-44 RACE N SEX M
CH/OP NO. / STATE / YEAR /
VEH. LIC. NO / STATE / YEAR /
MAKE BODY TYPE YEAR COLOR
DID UNLAWFULLY COMMIT THE FOLLOWING OFFENSE WITHIN THIS MUNICIPALITY,
NAMELY AT: Harrington Ave & 22nd St. So.

NAME: Joseph Walker B 71742

SPEEDING M.P.H. IN M.P.H. ZONE ☐ FROM WRONG LANE
IMPROPER LEFT TURN ☐ NO SIGNAL ☐ CUT CORNER ☐ PROHIBITED
IMPROPER RIGHT TURN ☐ NO SIGNAL ☐ INTO WRONG LANE ☐ PROHIBITED ☐ FROM WRONG LANE
TRAFFIC SIGNAL VIOLATION (WHEN LIGHT TURNED RED) ☐ PASSED MIDDLE OF INTERSECTION ☐ MIDDLE OF INTERSECTION ☐ NOT REACHED INTERSECTION
STOP SIGN VIOLATION ☐ WRONG PLACE ☐ WALK SPEED ☐ FASTER
IMPROPER PASSING AND LANE USAGE ☐ AT INTERSECTION ☐ WRONG SIDE OF PAVEMENT ☐ BETWEEN TRAFFIC ☐ ON RIGHT ☐ ON GRADE ☐ LANE STRADDLING ☐ WRONG LANE ☐ ON CURVE
FAILURE TO YIELD RIGHT OF WAY ☐ FROM PRIVATE DRIVE ☐ FROM STOP/YIELD SIGN ☐ WHEN TURNING LEFT
OTHER Assault (Simple)

IN VIOLATION OF 784 ☒ CITY ORD. ☐ STATE STAT.

SLIPPERY PAVEMENT ☐ WET ☐ RAIN ☐ NIGHT
DARKNESS ☐ FOG ☐ RAIN ☐ UNLIGHTED ☐ CROSS ☐ ONCOMING
OTHER TRAFFIC PRESENT ☐ PEDESTRIAN ☐ SAME DIRECTION
CAUSED PERSON TO DODGE ☐ DRIVER ☐ PEDESTRIAN
JUST MISSED ACCIDENT
ST. APPROX. FT.
PD ☐ PI ☐ FATAL ☐
☐ PED ☐ VEHICLE ☐ HIT FIXED OBJECT ☐ RIGHT ANGLE ☐ HEAD ON ☐ SIDE SWIPE ☐ REAR END ☐ RAN OFF ROADWAY ☐ INTERSECTION

HIGHWAY TYPE: ☐ 2 LANE ☐ 3 LANE ☐ 4 LANE ☐ 4 LANE DIVIDED
AREA: ☐ RURAL ☐ RESIDENTIAL ☐ SCHOOL ☐ INDUSTRIAL ☒ BUSINESS

THE UNDERSIGNED FURTHER STATES THAT HE HAS JUST AND REASONABLE GROUNDS TO BELIEVE, AND DOES BELIEVE, THAT THE PERSON NAMED ABOVE COMMITTED THE OFFENSE HEREIN SET FORTH, CONTRARY TO LAW. SWORN TO AND SUBSCRIBED BEFORE ME

1 No

PR NO. 795-913

THIS 11th DAY OF April A.D. 19 44
(SIGNATURE OF OFFICER OR COMPLAINANT)
(NOTARY PUBLIC) (ADDRESS OF COMPLAINANT)

COURT APPEARANCE 24 DAY OF Aug 19 44 AT 2:00 P.M.
I HEREBY AFFIX MY SIGNATURE WITH THE UNDERSTANDING THAT SUCH IS NOT A PLEA OF GUILTY, BUT TO CERTIFY THAT I HAVE RECEIVED A SUMMONS COPY OF THIS CITATION AND AGREE TO APPEAR AT THE TIME AND PLACE INDICATED.

SIGNATURE: _____

LURRED COPY

AP10

IN THE MUNICIPAL COURT OF THE CITY OF ST. PETERSBURG, FLORIDA

Citation/Complaint

No. B-71742

CITY OF ST. PETERSBURG,

vs.

JOSEPH WALLER, JR.

Bill of Particulars

Comes now the plaintiff, City of St. Petersburg, by and through its undersigned attorney, and brings this its Bill of Particulars in response to the defendant's motion heretofore filed.

1. Any or all of the following:

(a) The defendant, Joseph Waller, Jr., swung a megaphone or voice amplification device at several Police Officers, to wit: Any or all of the following:

Lt. Mel Coleman, Sgt. Mein and Officer Hanson, St. Petersburg Police Department

(b) The defendant Joseph Waller, Jr., kicked and spat upon Officer O. Murphy, St. Petersburg Police Department.

2. (a) The following persons known to the City were witnesses to the assault described in 1(a) of this Bill of Particulars:

Lt. Mel Coleman, Sgt. Mein and Officer Hanson, St. Petersburg Police Department

The following persons may have witnessed the assault described in 1(a) of this Bill of Particulars:

Officers Trappman, Hurley and Morris
St. Petersburg Police Department
1300 First Avenue North, St. Petersburg, Florida

Joseph Waller—2450 Harrington Avenue South

Joyce Waller Walker—2450 Harrington Avenue South

Fred Lewis Hamilton—2450 Harrington Avenue South

James Gilley—805 Private Court South

Steven C. Heatly—263 Jordan Park

(b) The following persons known to the City were witnesses to the assault or assaults described in Paragraph 1(b) of this Bill of Particulars:

Officer O. Murphy and Officer G. Lake
St. Petersburg Police Department
1300 First Avenue North, St. Petersburg, Florida

Joseph Waller, Jr.—2450 Harrington Avenue South
St. Petersburg, Florida

3. One (1) megaphone or voice amplification device. The device is located in the Evidence Room of the St. Petersburg Police Department, 1300 First Avenue North, St. Petersburg, Florida. The custodian of said device is Lois Story, St. Petersburg Police Department.

4. (a) The assault described in Paragraph 1(a) of this Bill of Particulars occurred at the intersection of Harrington Avenue and 22nd Street South, St. Petersburg, Florida.

(b) The assault described in Paragraph 1(b) of this Bill of Particulars occurred while the defendant, Joseph Waller, Jr. was enroute to the St. Petersburg Police Station, 1300 First Avenue North, St. Petersburg, Florida, from Harrington Avenue South and 22nd Street, St. Petersburg, Florida.

.....

Michael S. Davis
Assistant City Attorney
Municipal Building
St. Petersburg, Florida

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the above Bill of Particulars has been furnished to Gardner Beckett, Esq., 52—Sixth Street South, St. Petersburg, Florida, Attorney for defendant, by mail, this ..... day of August, 1968.

.....

Attorney

AP13

CITY OF ST. PETERSBURG
PINELLAS COUNTY, FLORIDA
CITATION / COMPLAINT

No. B 71820

DOCKET NO. 123814 PROPERTY NO. 16394 OFFENSE NO. 4735
IN THE MUNICIPAL COURT OF THE CITY OF ST. PETERSBURG, FLORIDA:
THE UNDERSIGNED BEING DULY SWORN UPON HIS OATH DEPOSES AND SAYS:

DATE OF CITATION: 14-VIII-68 TIME OF CITATION: 2145
DATE OF VIOLATION: 14-VIII-68 TIME OF VIOLATION: 2120
NAME: VASQUEZ (F) WALKER
RESIDENCE: 2450 - 6 HARRINGTON A/S
PLACE EMPLOYED: NO 1
OCCUPATION: NONE D.O.B. 10-2-49 PLACE USA
CH/OP NO. ~~~ STATE ~~~ YEAR ~~~
VEH. LIC. NO. ~~~ STATE ~~~ YEAR ~~~
MAKE ~~~ BODY TYPE ~~~ YEAR ~~~ COLOR ~~~
DID UNLAWFULLY COMMIT THE FOLLOWING OFFENSE WITHIN THIS MUNICIPALITY,
NAMELY AT: 1 HARRINGTON A/S & 22 S/S

NAME: Joseph Waller

SPEEDING ___ M.P.H. IN ___ M.P.H. ZONE ☐ FROM WRONG LANE
IMPROPER LEFT TURN ☐ NO SIGNAL ☐ CUT CORNER ☐ PROHIBITED
IMPROPER RIGHT TURN ☐ NO SIGNAL ☐ INTO WRONG LANE ☐ PROHIBITED ☐ FROM WRONG LANE
TRAFFIC SIGNAL VIOLATION (WHEN LIGHT TURNED RED) ☐ PASSED MIDDLE OF INTERSECTION ☐ MIDDLE OF INTERSECTION ☐ NOT REACHED INTERSECTION
STOP SIGN VIOLATION ☐ WRONG PLACE ☐ WALK SPEED ☐ FASTER
IMPROPER PASSING AND LANE USAGE ☐ AT INTERSECTION ☐ CUT IN ☐ WRONG SIDE OF PAVEMENT ☐ BETWEEN TRAFFIC ☐ ON RIGHT ☐ ON GRADE ☐ LANE STRADDLING ☐ WRONG LANE ☐ ON CURVE
FAILURE TO YIELD RIGHT OF WAY ☐ FROM PRIVATE DRIVE ☐ FROM STOP / YIELD SIGN ☐ WHEN TURNING LEFT

OTHER
VERBAL ABUSE TO A POLICE OFFICER

IN VIOLATION OF 25.11.1 ☐ CITY ORD. ☐ STATE STAT.

SLIPPERY PAVEMENT ☐ WET ☐ RAIN ☐ SNOW
DARKNESS ☐ DUSK ☐ RAIN ☐ UNLIGHTED ☐ GLARE ☐ ONCOMING
OTHER TRAFFIC PRESENT ☐ PEDESTRIAN ☐ SAME DIRECTION

CAUSED PERSON TO DODGE ☐ DRIVER ☐ PEDESTRIAN
JUST MISSED ACCIDENT BY APPROX. ___ FT.

PD ☐ PI ☐ FATAL ☐
☐ PED ☐ VEHICLE ☐ HIT FIXED OBJECT ☐ RIGHT ANGLE ☒ HEAD ON ☐ SIDE SWIPE ☐ REAR END ☐ RAN OFF ROADWAY ☐ INTERSECTION

HIGHWAY TYPE: ☐ 2 LANE ☐ 3 LANE ☐ 4 LANE ☐ 4 LANE DIVIDED
AREA: ☐ RURAL ☐ RESIDENTIAL ☐ SCHOOL ☐ INDUSTRIAL ☐ BUSINESS

B 71820

THE UNDERSIGNED FURTHER STATES THAT HE HAS JUST AND REASONABLE GROUNDS TO BELIEVE, AND DOES BELIEVE, THAT THE PERSON NAMED ABOVE COMMITTED THE OFFENSE HEREIN SET FORTH, CONTRARY TO LAW. SWORN TO AND SUBSCRIBED BEFORE ME

1970

PR NO. 1197-8655

THIS 14 DAY OF Aug 19 68 [signature]
(SIGNATURE OF OFFICER OR COMPLAINANT)

[signature]
(NOTARY PUBLIC)

(ADDRESS OF COMPLAINANT)

COURT APPEARANCE 26 DAY OF Aug 19 68 AT 9 A.M.
I HEREBY AFFIX MY SIGNATURE WITH THE UNDERSTANDING THAT SUCH IS NOT A PLEA OF GUILTY, BUT TO CERTIFY THAT I HAVE RECEIVED A SUMMONS COPY OF THIS CITATION AND AGREE TO APPEAR AT THE TIME AND PLACE INDICATED.

SIGNATURE: ___

BLURRED COPY

IN THE MUNICIPAL COURT OF THE CITY OF ST. PETERSBURG, FLORIDA

Citation/Complaint B-71820

CITY OF ST. PETERSBURG

vs.

JOSEPH WALLER, JR.

Bill of Particulars

1. Any or all of the following conduct:

(a) The defendant, Joseph Waller, Jr. shouted through a megaphone or voice amplification device any or all of the following words: "You pigs, look, there's the pigs." Said words were directed at any or all of the following persons: Sgt. Mein and Lt. Mel Coleman, both of the St. Petersburg Police Department, while said officers were engaged in the performance of their official duties.

(b) The defendant Joseph Waller, Jr. shouted or said any or all of the following words: "Mother Fucker", "Mother Fuckers", "White Bastards". Said words were directed at any or all of the following Police Officers: Lt. Mel Coleman, Sgt. Mein, Officers Hanson, Hurley, Trappman, and Morris, while said officers were engaged in the performance of their official duties.

(c) The defendant, Joseph Waller, Jr., shouted or said: "Your mother is a stringy haired white whore." Said words were directed at Officer O. Murphy while said officer was engaged in the performance of his official duties.

(d) The defendant, Joseph Waller, Jr., shouted or said any or all of the following words: "Pig", "You Pigs",

"Pigs", and "Sooie". Said words were directed at any or all of the following persons: Officers Trappman, Hanson, Hurley, and Morris, all of the St. Petersburg, Police Department, 1300—1st Avenue North, St. Petersburg, Florida, while said officers were engaged in the performance of their official duties.

2. (a) The following persons known to the City were witnesses to the conduct described in 1 (a) of this Bill of Particulars:

Lt. Mel Coleman and Sgt. Mein, St. Petersburg Police Department, 1300—1st Avenue North, St. Petersburg, Florida

Joseph Waller, Jr.—2450 Harrington Avenue South

The following persons may have witnessed part or all of the conduct described in 1 (a) of this Bill of Particulars:

Officers Trappman, Hanson, Hurley, and Morris, St. Petersburg Police Department, 1300—1st Avenue North, St. Petersburg, Florida

Joyce Waller Walker—2450 Harrington Avenue South, St. Petersburg, Florida

Fred Lewis Hamilton—2450 Harrington Avenue South, St. Petersburg, Florida

James Gilley—805 Private Court South, St. Petersburg, Florida

Steven C. Heatly—263 Jordan Park, St. Petersburg, Florida

Other persons not known to City.

(b) The following persons known to the City were witnesses to the conduct described in 1 (b) of this Bill of Particulars:

The persons named in 1(b) of this Bill of Particulars.

The following persons may have witnessed part or all of the conduct described in 1 (b) of this Bill of Particulars:

The persons named in 2 (a) and not named in 1 (b) of this Bill of Particulars.

(c) The following persons were witnesses to the conduct described in 1 (c) of this Bill of Particulars:

Officer O. Murphy and Officer Leake, St. Petersburg Police Department—1300—1st Avenue North, St. Petersburg, Florida

Joseph Waller, Jr.—2450 Harrington Avenue South, St. Petersburg, Florida

(d) The following persons were witnesses to the conduct described in 1 (d) of this Bill of Particulars:

Officers Trappman, Hanson, Hurley, and Morris, St. Petersburg Police Department, 1300—1st Avenue North, St. Petersburg, Florida

3. One (1) voice amplification device known as a megaphone. Said device is located in the evidence room of the St. Petersburg Police Department. The custodian of said megaphone is Lois Story.

4. (a) and (b) The conduct described in 1 (a) and 1 (b) of this Bill of Particulars occurred on Harrington Avenue South, at approximately the intersection of Harrington Avenue South and 22nd Street, St. Petersburg, Florida.

(c) The conduct described in 1 (c) of this Bill of Particulars occurred while the defendant, Joseph Waller, Jr. was enroute via a moving motor vehicle to the St. Petersburg Police Station, 1300—1st Avenue North, St. Petersburg, Florida, from Harrington Avenue and 22nd Street South, St. Petersburg, Florida.

(d) The conduct described in 1 (d) of this Bill of Particulars occurred approximately at the intersection of Harrington Avenue South and 22nd Street South, St. Petersburg, Florida.

.....

Michael S. Davis
Assistant City Attorney
Municipal Building
St. Petersburg, Florida

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the above Bill of Particulars has been furnished to Gardner W. Beckett, Jr., Esq., Attorney for Defendant, 52—Sixth Street South, St. Petersburg, Florida, by mail, this ..... day of August, 1968.

.....

Attorney

IN THE
SUPREME COURT OF THE STATE OF FLORIDA

CITY OF ST. PETERSBURG, a
municipal corporation,
Petitioner,

vs.

JOSEPH WALLER, JR.,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL OF FLORIDA, SECOND DISTRICT

TO THE SUPREME COURT OF THE STATE OF FLORIDA:

Petitioner presents this its Petition for a Writ of Certiorari and states:

1. Petitioner seeks to have reviewed the Order of the District Court of Appeal, Second District, dated March 5, 1971. Petition for Rehearing was denied on April 8, 1971.

2. This Petition is presented pursuant to Article V, Section 4 of the Florida Constitution and Rule 4.5c(6), Florida Rules of Appellate Procedure.

3. Accompanying this Petition are conformed copies of so much of the record of the proceedings, including the decision that the Petitioner seeks to have reviewed, as is necessary to show jurisdiction in this Court and the brief in support of jurisdiction.

4. The facts in this case are as follows:

A police cruiser on routine patrol duty in a colored section of St. Petersburg encountered a roving gang of

negroes. The group was equipped with a powerful electronically driven megaphone. The leader of this group, the defendant, Joseph Waller, shouted an amplified "Pigs, Pigs, White Pigs, Sooey, Sooey" into the open cruiser window, directly at the police officer occupants of the cruiser as it drove by. (R-1, TR-26)

The patrolman reported the incident to the Shift Lieutenant who was also in a cruiser in the immediate area. The Lieutenant directed the first cruiser to follow him as he drove to the area where the group was gathered. Once again, the defendant, Joseph Waller, began to shout the same epithets into the speaker directly at the cruiser. (R-1, TR-27, TR-50, TR-56) When the cruiser arrived and stopped directly in the street opposite the gang, the defendant, Joseph Waller, using his amplified device, stepped into the street, and once again shouted these and similar phrases directly into the cruiser window. (R-2) The Lieutenant determined there had been and there was a continuing violation of City Ordinance 25.43.1, to wit:

> "It shall be unlawful for any person to challenge to fight, assault, strike, *verbally abuse* or make derogatory remarks to a police officer in the performance of his duties." (Emphasis supplied)

and personally made the arrest. (R-5, TR-75; R-4, TR-70)

The Lieutenant then transferred his prisoner, defendant Waller; to a patrolman who had arrived in a third cruiser, for transportation to the City Jail, and began to supervise the round-up and arrest of several more of the more unruly members of this gang who continued to heap opprobrious language upon the officers. Some of these resisted arrest, resulting in a struggle which necessitated the eventual use of billy clubs. Defendant Waller, who

was still on the scene, began to struggle, curse and spit into the face of those officers having him in custody. (R-1, TR-29; AP-4, TR-70) For this offense, he was charged with using obscene language under Ordinance 25.42. Subdued and finally on his way to the City Jail, in the custody of still another team of officers, he was well away from the original scene of difficulties when he again flared angry, kicked, cursed and spit into the face of the officer holding him in custody. (R-3, TR-62) He was charged with simple assault for this series of incidents. He was tried on all three counts in the Municipal Court of St. Petersburg and convicted. All three convictions were appealed. All three convictions were sustained in the Circuit Court. A rehearing was sought and denied.

5. On the foregoing facts, the District Court of Appeal was presented with the following point of law:

IS THE UNDERSCORED PORTION OF THE CITY OF ST. PETERSBURG ORDINANCE UNCONSTITUTIONALLY VAGUE?

> "It shall be unlawful for any person to challenge to fight, assault, strike, *verbally abuse* or make derogatory remarks to a police officer in the performance of his duties." (Emphasis supplied)

The District Court by its action in reversing the Circuit Court (which in turn had affirmed the Municipal Court) and in its written opinion directly decided that the ordinance was unconstitutionally vague.

6. The same point of law was involved in—
Nixon v. *State of Florida*, 178 So. 2d 620 (Fla. App. 1965)

decided by the Third District on September 21, 1965. In that case, the Third District specifically held a similar

ordinance constitutional and not subject to the attack of being unduly broad and vague. The pertinent portions of the same are:

> "* * * concerning abuses, obscene or profane language in the presence of anyone else, or any indecent, insulting or *abusive language* to another, or makes any threats of violence against another person." (Emphasis supplied)

7. The same point of law was involved in—

> *McArthur* v. *State of Florida,* 191 So. 2d 429 (Fla. 1966)

decided by this Court on October 24, 1966. This Court therein upheld the stated statute, to wit: FSA 317.21 and ruled it was not unconstitutionally vague and cited as authority therefor—

City of St. Petersburg v. *Calbeck,* 114 So. 2d 316 The statute therein made it unlawful for any person who is under the influence of intoxicating liquor, *when affected to the extent his normal faculties are impaired,* to drive a car. The Court held that the italicized portion was not unconstitutionally vague.

8. The same point of law was involved in—

> *Snow* v. *State of Florida,* 179 So. 2d 99 (Fla. App. 1965)

decided by the Third District in October, 1965, upholding a vagrancy ordinance as sufficiently explicit to meet the requirements of due process.

9. The same point of law was discussed at length in—

Lieberman v. *Marshall*, 236 So. 2d 120 (Fla. 1970)

and

Carlson v. *City of Tallahassee*, 240 So. 2d 866 (Fla. 1970)

In both of these cases, this Court affirmed and cited with approval the Federal Court decision of—

Chaplinsky v. *State of New Hampshire*, 315 U.S. 568, 62 Sup. Ct. 766, 86 L.Ed. 1031,

a 1942 Federal Supreme Court decision upholding under the attack of being unconstitutionally vague a New Hampshire statute prohibiting "fighting words." The statute therein specifically prohibited the addressing of any *offensive, derisive or annoying word* to any person lawfully in a public place, or to call him by any *offensive or derisive* name.

In both of the above Florida cases, this Court extensively drew from *Chaplinsky*, approved such decision, and carefully set out the law of Florida as in conformity with this case.

10. The decision of the District Court of Appeal of Florida, Second District, which this petitioner seeks to have reviewed, is in direct conflict with the above mentioned decisions of the Supreme Court and other decisions of the Court of Appeal. Because of the reasons set forth in the petitioner's brief, it is believed the petition sought to be reviewed was erroneous and that the decisions of the Supreme Court and the District Court of Appeals of Florida, First and Third Districts, are correct and should be restated by this Court as the controlling law for the State of Florida.

Wherefore, petitioner requests this Court to grant a Writ of Certiorari and enter its Order quashing the decision and order sought to be reviewed and approving the decisions of the Supreme Court and District Courts of Appeal of Florida, First and Third Districts, as correct and granting such other and further relief as shall seem right and proper to the Court.

.....

Carl R. Linn
Assistant City Attorney
Municipal Building
St. Petersburg, Florida
Attorney for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Petition for a Writ of Certiorari has been furnished to Gardner W. Beckett, Jr., Attorney for respondent, 52—6th Street South, St. Petersburg, Florida, by mail, this 29th day of April, 1971.

.....

Attorney